



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/325,296	06/03/1999	BRYAN L. REIDENBACH	1493-M	2647

7590

03/26/2002

JOSEPH A SEBOLT
SAND & SEBOLT
4801 DRESSLER ROAD NW STE 194
CANTON, OH 44718

EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/325,296

Applicant(s)

REIDENBACH, BRYAN L.

Examiner

Nathan J. Newhouse

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-14,17 and 21-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-14,17 and 21-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 27, 2001 has been entered.

Drawings

2. The drawings are objected to because there is an inconsistency in showing the location of the security fins 60. In figure 4, the security fins are shown as extending inwardly from the inner surface 44 of the breakaway skirt(which is consistent with the specification), but in figure 6 the security fins 60 are shown on the inner skirts. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 5-14, 17 and 21-60 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way

Art Unit: 3727

as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Throughout the specification and drawings, applicant describes a plurality of inner skirts to engage with the bottle to cause the breakaway skirt to remain with the bottle upon unscrewing. Applicant has not described in the specification that the breakaway skirt could function with only one inner skirt(claims 17, 22, 31, 51), only two inner skirts(claims 1, 6, 41), and only one upper inner skirt and one lower inner skirt(claim 14). Furthermore, it would appear that in order for the breakaway skirt to engage properly with the bottle neck, a plurality of inner skirts(embodiment of claim 1 and 17) or upper inner and lower inner skirts(embodiment of claim 14) would have to be arranged around the circumference.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 23, 31-40 and 51-60 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 23, line 2 applicant sets forth "at least first inner skirt", but this feature was previously set forth in claim 22 from which this claim depends. It is unclear if applicant is referencing the previously set forth inner skirt or if applicant is attempting to claim another first inner skirt.

In claim 31, line 9 it is not clear what "syng" is or means.

In claim 51, line 1 "tamer" should be replaced by --tamper--.

In claim 51, line 5 the phrase "said at least first" has no antecedent basis. It would appear that the channel is on the inner skirt. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 22-25, 27-29, 51-56 and 58-60 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barriac '030.

Barriac teaches a closure 23 having a breakaway skirt comprising an outer skirt 28 and a plurality of inner skirts 30 formed by slots 30a connected by a plurality of frangible bridges 29. The inner skirts have wings 34 to engage the container neck.

With respect to claim 23, the recession on the bottle nozzle is between the stop ledge 37 and the top of the bottle shoulder.

With respect to claim 51, the channel on the inner skirts are shown as 35 in figure 11 or alternatively between walls 34d and 30a in figure 14.

9. Claims 1, 22-25, 27-29, 51-56 and 58-60 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the EP reference(541,466).

The EP reference teaches a closure having a breakaway band extending downwardly from a plurality of frangible links. The breakaway band comprises an outer skirt and a plurality of inner skirts. Each of the inner skirts is connected at the bottom

Art Unit: 3727

edge of the outer skirt and via a snap connection by protrusion on the inner skirt. The inner skirts also have an inwardly extending protrusion or wing that partially surrounds a stop ledge on the bottle.

With respect to claim 23, the recession on the bottle nozzle is shown in figure 4 as being between stop ledge 9 and the top of the bottle shoulder.

With respect to claim 51, the channel on the inner skirts is formed between surfaces 15 and 17 of each inner skirt as shown in figure 4.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 26, 30 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barriac '030 OR the EP reference(541,466) in view of Grussen '918.

Barriac or the EP reference teach everything except for the hinge between the cap skirt and the breakaway skirt to allow for the cap to remain attached to the bottle via the breakaway skirt after opening of the cap.

Grussen teaches a similar cap having a threaded skirt and a breakaway band connected via frangible bridges 4 to the cap skirt and the breakaway band having a hinged inner skirt 7 to engage with a stop ledge on the bottle when the cap is opened to break bridges 4 thus indicating that the cap has been opened. Grussen further teaches a hinge 5 connecting the cap skirt to the breakaway band to allow the cap to remain

Art Unit: 3727

with the bottle via the breakaway band to prevent the cap from being misplaced or lost. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a hinge as taught by Grussen between the breakaway band and closure skirt of either the EP reference OR Barriac to keep the cap attached to the bottle after opening and thereby prevent the cap from being misplaced.

Response to Arguments

12. Applicant's arguments filed July 2, 2001 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1, 5-14, 17 and 21-60 under 35 USC 112, first paragraph, applicant argues that there is support for claiming only one inner skirt(claim 17, 22, 31, 51) only two inner skirts(claims 1, 6, 41) and only one upper and one lower inner skirt(claim 14) and the examiner is incorrectly applying the concept of undue breadth. Applicant is incorrect. "Even in a mechanical case, claims may be no broader than the supporting disclosure. A narrower disclosure will limit claim breadth." *GENTRY GALLERY INC. v. BERKLINE CORP.* 134 F.3d1473, 45 USPQ 2d 1498(Fed. Cir. 1998). As stated previously, applicant has not described in the specification the breakaway skirt with only one (claim 17) inner skirt, two inner skirts(claims 1, 6) or one upper and one lower inner skirt(claim 14). Moreover, it is not clear if the breakaway skirt with the different inner skirt configurations as set forth in these claims would function properly. That is, if only one inner skirt is provided, would the breakaway skirt function or would the cap be able to be removed without the breakaway skirt being separated from the cap. In order to over come this rejection, applicant can file an

Art Unit: 3727

affidavit/declaration that the breakaway skirt will work with only one inner skirt(claim 17), only two inner skirts(claim 1, 6), or one upper and one lower inner skirt(claim 14) no matter where each of these is located and their relative circumferential extent or size in relation to the breakaway skirt and this coincides with what is shown in the figures.

Relative size of any of the inner skirts will be presumed to be of a size relative to the container they are on as proportionately shown in the disclosed figures unless otherwise stated in the declarations. Of course, a nexus with the claims as set forth must exist.

With respect to applicant's arguments concerning the "wing" limitation, these are noted, but applicant has not set forth specific structure to the "wing" within the claims. Applicant has only set forth that the wing partially surrounds the ledge of the bottle and is on the inner skirt. As such, the EP reference @ 15 and the Barriac reference @ 34 teach the "wing".

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Beck et al. and Bosl et al. show caps with breakaway skirts and a hinge arrangements therebetween to allow the caps to remain attached to the bottles via the breakaway skirts.

German et al., Herr, Wright et al. and Trout teach similar caps with breakaway skirts having a plurality of inner skirts that are hinged to the breakaway skirts.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group

Art Unit: 3727

clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning the merits of the examination of the application from the examiner should be directed to Nathan J. Newhouse whose telephone number is (703)-308-4158. The examiner can normally be reached on Monday-Thursday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on (703)-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9302 for regular communications and (703)-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408


Application/Control Number: 09/325,296

Page 9

Art Unit: 3727

Information Help line
Internet PTO-Home Page

1-800-786-9199
<http://www.uspto.gov>


Nathan J. Newhouse
Primary Examiner
Art Unit 3727

March 21, 2002